



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0428; FRL-9991-01-R4]

Air Plan Approval; North Carolina; Air Quality Control, Revisions to Particulates from Fugitive Dust Emissions Sources Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ), through a letter dated September 10, 2021. The SIP revision includes changes to the fugitive dust emissions rule in the State's SIP that modify several definitions, clarify its applicability requirements, adjust the requirement for fugitive dust control plan submissions, and make minor language and formatting changes. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0428 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file

sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, North Carolina 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at WilliamsMiles.Pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

North Carolina adopted 15 NCAC 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources* (hereinafter Rule 02D .0540), in 1998 to regulate excess non-process fugitive dust emissions generated from activities associated with four specified source categories (i.e., hot mix asphalt plants; mica or feldspar processing plants; sand, gravel, or crushed stone operations; and light weight aggregate processes). On November 10, 1999, EPA incorporated this particulate matter fugitive emission control regulation into the North Carolina SIP at Section .0500 – Emission Control Standards under Subchapter 2D – Air Pollution Control Requirements of the North Carolina SIP.¹ See 64 FR 61213. Later, on January 31, 2008, North Carolina submitted amendments to EPA that would make the rule applicable to all fugitive dust emissions instead of only non-process fugitive dust emissions. See 84 FR 33850 (July 16, 2019). Additionally, 15 NCAC 02D .0540 was renamed *Particulates from Fugitive Dust Emission Sources*. *Id.* EPA approved the January 31, 2008, SIP submission on July 16, 2019. On September 10, 2021, NCDAQ submitted another revision to Rule 02D .0540 that includes

¹ In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as “Subchapter 2D Air Pollution Control Requirements.”

several changes.^{2,3} EPA is proposing to approve these changes because they are consistent with CAA requirements, including the requirement that they would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. EPA's rationale for proposing approval is described in more detail in Section II of this notice of proposed rulemaking (NPRM).

II. Analysis of the State's Submission

The September 10, 2021, SIP submittal revises Rule 02D .0540 by modifying several definitions, clarifying its applicability requirements, adjusting the requirement for fugitive dust control plan submissions, and making minor language and formatting.

In the September 10, 2021, submission, two definitions in paragraph .0540(a) have been modified substantively. Other definitions have only minor, non-substantive language changes that do not alter the meaning of the rule as well as formatting changes.⁴ All definitions have been reorganized in alphabetical order. The first definition with a substantive change is "Fugitive dust emissions." This revised definition removes the phrase "from process operations" from the definition to better align the rule with the State's intent to make the rule applicable to all fugitive dust emissions at subject facilities.⁵ The removal of this limiting language expands applicability to both process and non-process operations, thus increasing the rule's scope. The revision also substantively modifies the definition of "Substantive complaints." This definition is revised to clarify what kind of physical evidence is necessary to constitute a substantive complaint and to clarify that verification is provided by NCDAQ. The revision now requires physical evidence "of excess fugitive dust emissions" and identifies NCDAQ as the verifying

² EPA received the September 10, 2021, submittal on September 14, 2021. For clarity, throughout this notice EPA will refer to the September 14, 2021, submission by its cover letter date of September 10, 2021.

³ The September 10, 2021, submittal included several changes to other North Carolina SIP-approved rules that are not addressed in this notice. EPA will act on those rule revisions in separate rulemakings.

⁴ One example is a modification to the definition "Production of crops", which removes the phrase "them" and adds "crops" in its place, to specify that the protection of "crops" from disease is included within the definition.

⁵ See the rule applicability exclusions in paragraph .0540(b).

entity. EPA finds this change acceptable because it resolves ambiguity by clarifying what evidence is required to develop a substantive complaint.

Paragraph .0540(b) is revised with one substantive change and some minor non-substantive changes. The substantive change addresses the limitation that Rule .0540 does not apply to land disturbing activities generally. The revision cabins that limitation by narrowing the exemption to apply only to those land disturbing activities that are not required to obtain a permit pursuant to 15A NCAC 02Q or that are not subject to a requirement under 15A NCAC 02D.⁶ Previously, even those land disturbing activities that did require a permit pursuant to 15 NCAC 02Q or were subject to a requirement pursuant to 15 NCAC 02D were exempt. EPA finds this change acceptable as the language is SIP strengthening since it narrows an exemption to Rule .0540. In addition to this substantive change, the revision includes some minor non-substantive changes to paragraph .0540(b), such as minor language choice modifications and changes to the formatting of rule titles.

Paragraphs .0540(c) and (d) are primarily revised with minor and non-substantive changes, primarily dealing with word choice, such as changing the word “under” to the phrase, “pursuant to.” One other minor change the revision makes is to add a cross-reference to “Paragraph (g)” in Paragraph .0540(d)(3). This cross-reference clarifies when the Director’s approval of a fugitive dust control plan is complete and does not substantively change the requirements of the rule. One substantive change in the revision removes the word “non-process” from paragraph .0540(d) to increase the rule’s scope by making it applicable to both process and non-process operations. Another substantive change removes the word “immediate” from Paragraph .0540(d)(1) with respect to the description of “measures” used to abate fugitive emissions. Previously, this subparagraph required that owners/operators of applicable sources submit a report to the Director that included what immediate measures could be used to abate

⁶ Examples of land disturbing activities include clearing, grading, digging, and related activities such as hauling fill and cut material, building material, or equipment.

fugitive emissions if a substantive complaint was filed. The change makes the term “measures” more inclusive as owners/operators will now need to include immediate and non-immediate measures in the report.

Paragraph .0540(e) is revised with two substantive changes.⁷ The first change occurs at the beginning of paragraph .0540(e), which now mandates that the Director require the owner or operator of a facility subject to paragraph (c) of the rule to submit a fugitive dust control plan if either ambient air quality measurements or dispersion modeling shows excess fugitive dust emissions cause the ambient air quality standard for particulates to be exceeded, or if NCDAQ observes excess fugitive dust emissions beyond the property boundary. The previous version of paragraph (e) gave the Director the discretion to require such a plan. The revision is SIP strengthening as the Director’s ability to require the submittal of a fugitive dust control plan is no longer discretionary. The second change removes the word “non-process” from paragraph .0540(e) to increase the rule’s scope by making it applicable to both process and non-process operations. Paragraph .0540(e) also includes other minor changes to wording which do not alter the meaning of the provision.

Next, paragraph .0540(g), which identifies the findings that the Director must make to approve a fugitive dust control plan, includes several wording changes. Subparagraph (g)(2) currently requires a finding that the proposed schedule to implement the fugitive dust plan required in subparagraph (f)(3) will reduce fugitive emissions “in a timely manner.” The submittal revises this requirement by removing the phrase “in a timely manner.” EPA is proposing to approve this change because paragraph .0540(c) continues to prohibit visible emissions in excess of that allowed under paragraph (e) and because the phrase “in a timely manner” was discretionary and never defined. Paragraph (e) requires a dust control plan if ambient air quality measurements or dispersion modeling show a violation or potential violation

⁷ NCDAQ submitted a letter to EPA on January 25, 2023, requesting withdrawal of the changes to 15 NCAC 02D .0540(e)(1) from consideration for inclusion in the North Carolina SIP. For this reason, EPA is not proposing to approve the changes to paragraph 02D .0540(e)(1) through this rulemaking.

of the ambient air quality standards for particulates or if NCDAQ observes excess fugitive dust emissions from the facility beyond the property boundary for six minutes in any one hour using Reference Method 22 in 40 CFR part 60, Appendix A-7. Pursuant to paragraph (g), the Director must approve the plan if, among other things, the methods used to control fugitive dust emissions prevent fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates. Paragraph (g) also includes non-substantive wording changes.

EPA has preliminarily determined that the changes to the regulations above are consistent with CAA requirements, including the requirement that they would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. Therefore, EPA is proposing approval of the changes to these regulations.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 15A NCAC Subchapter 02D .0540, *Particulates from Fugitive Dust Emission Sources*, state effective on September 1, 2019, as discussed in sections I. and II. of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” Section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the September 10, 2021, SIP revision to incorporate various changes to Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources*. EPA is proposing to approve these changes for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52.

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 3, 2023.

Daniel Blackman,
Regional Administrator,
Region 4.

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